

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

WILLIAM HENDERSON,)
)
Plaintiff,)
)
-vs-) Case No. CIV-17-48-F
)
CORRECTIONS CORPORATION)
OF AMERICA, et al.,)
)
Defendants.)

ORDER

On January 9, 2018, United States Magistrate Judge Gary M. Purcell issued a Supplemental Report and Recommendation (doc. no. 49), recommending that Defendants' Motion for Summary Judgment ("second motion") (doc. no. 45) be granted and that judgment issue in favor of defendants and against plaintiff. Magistrate Judge Purcell specifically determined that summary judgment should be granted because plaintiff failed to complete the administrative grievance process prior to filing his 42 U.S.C. § 1983 action.

Plaintiff has timely objected to the Supplemental Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a de novo review of the matter.

At the outset, the court rejects plaintiff's argument that defendants' second motion should have been denied as being filed in violation of LCvR 56.1(a). In declining to adopt Magistrate Judge Purcell's Report and Recommendation (doc. no. 37) to the extent it recommended granting defendants' first Motion for Summary Judgment ("first motion") (doc. no. 23), the court was not adjudicating defendants'

first motion in plaintiff's favor. After Magistrate Judge Purcell issued the original Report and Recommendation, the court granted plaintiff leave to file a response to defendants' first motion out of time. *See*, doc. no. 40. The court, in its order, specifically advised that if plaintiff filed his response within the time prescribed, the court would decline to adopt Magistrate Judge Purcell's original Report and Recommendation. *See, id.* at p. 3. It was the court's intention for Magistrate Judge Purcell to recommend a new ruling with respect to defendants' first motion after considering plaintiff's out-of-time response. However, unsure of the court's intention, Magistrate Judge Purcell instead entered an order establishing a new deadline for filing dispositive motions. Defendants thereafter filed their second motion raising the same failure to exhaust administrative remedies argument. Plaintiff responded to the motion and defendants replied. Magistrate Judge Purcell clearly acted within his discretion in permitting defendants to file another motion for summary judgment. *See*, LCvR 56.1(a) ("Absent leave of court, each party may file only one motion under Fed. R. Civ. P. 56."). Therefore, the court finds plaintiff's objection to defendants' second motion as violating LCvR 56.1(a) is without merit.

In addition, the court rejects plaintiff's argument that the court should not accept Magistrate Judge Purcell's recommended ruling because there are multiple questions of material facts as to whether the administrative remedies at issue were available. The court, having conducted its de novo review, concurs with the analysis and recommended ruling of Magistrate Judge Purcell. The court need not repeat that analysis here. The court specifically concludes that plaintiff has failed to proffer sufficient evidence to raise a genuine issue of material fact that the administrative grievance process was not available to him or capable of use by him. The court therefore accepts, adopts and affirms Magistrate Judge Purcell's recommended ruling.

Based upon the foregoing, the court **ACCEPTS, ADOPTS** and **AFFIRMS** United States Magistrate Judge Gary M. Purcell's Supplemental Report and Recommendation, filed January 9, 2018 (doc. no. 49). Defendants' Motion for Summary Judgment (doc. no. 45) is **GRANTED**. Judgment shall issue forthwith.

IT IS SO ORDERED this 1st day of March, 2018.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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